

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MABLE LEWIS AND OTHERS WHOSE
SIGNATURES ARE APPENDED

COMPLAINANTS

VS.

BLACK MOUNTAIN UTILITY DISTRICT

DEFENDANT

CASE NO.
90-328

O R D E R

On October 22, 1990, Mable Lewis and approximately 55 other individuals whose signatures were appended ("Complainants") filed a complaint with the Commission against the Black Mountain Utility District ("Black Mountain"). By Order of January 30, 1991, the Commission appointed Mable Lewis as spokesperson for the Complainants, found against Black Mountain's affirmative defense that the Commission did not have jurisdiction over the subject matter of the complaint, and ordered both Black Mountain and the Complainants to provide additional information to the Commission. Black Mountain and the Complainants responded to the Commission's Order on February 20 and February 21, 1991, respectively.

DISCUSSION

The Complainants reside in the Holiday Mobile Home Park in Dayhoit, Kentucky. Complainants allege they were injured in March of 1989 when their private wells were shut down due to ground

water contamination from toxic chemicals which were allegedly dumped over a period of years by National Electric Coil Plant. National Electric Coil Plant was formerly owned by Cooper Industries. Pursuant to an agreement with the Natural Resources and Environmental Protection Cabinet, Cooper Industries advanced \$500,000 to pay for a water line extension to provide service to the Complainants. Transmission and distribution mains were built by the Harlan Municipal Water Works and then transferred to Black Mountain as the area was within Black Mountain's service area. The Complainants have been served by Black Mountain since late 1989.

The Complainants allege that they are being unfairly penalized by being charged the same rate for water service paid by all other residential customers of Black Mountain. They maintain that the \$500,000 provided by Cooper Industries was intended for the benefit of the injured well owners and, if they are compelled to pay the same rates as those paid by other users, those rates place the burden for the water lines on the Complainants. Thus, they feel these rates are unfair and discriminatory to them. They request to be recognized as an adversely affected class of customers and permitted to pay only 50 percent of Black Mountain's tariffed rate for the next 30 years.

The Complainants also complained about high water bills, which they allege are due in part to recurring breaks in the service lines in the park caused by high pressure in Black Mountain's main. The Complainants contend that rates are also unfair in that one resident of a mobile home pays the same amount

monthly for water as does a family of ten. The Complainants allege that Black Mountain has profited from the injury done to them and request that they be reimbursed by Black Mountain for any overpayment that Black Mountain may have received, presumably from Cooper Industries.

Black Mountain filed its answer to the complaint on November 16, 1990. Black Mountain denied that the Complainants were being treated unfairly by paying the same rate for water as all other residential customers and denied the allegations concerning high water bills due to breaks in the service lines caused by high pressure. Black Mountain averred in its answer that the water line extension was constructed by the Harlan Municipal Water Works and was transferred to Black Mountain only after its completion. Black Mountain attached correspondence and other documentation concerning the transfer, and subsequently provided a breakdown of costs for the extension. Black Mountain requested that the complaint be dismissed.

FINDINGS

KRS 278.170, which prohibits a utility from discriminating as to rates or service, reads in pertinent part as follows:

No utility shall, as to rates or service, give any unreasonable preference or advantage to any person . . . or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

In order to establish differential rates for customers of a utility, the Commission must find a rational basis for classifying the customers differently. The Complainants herein do not allege

that they are not receiving "like and contemporaneous service under the same or substantially the same conditions" as other customers of Black Mountain.

There is no evidence that Black Mountain has profited from any injury to the Complainant. Black Mountain did not act as the contracting party with respect to construction of the extension, and thus did not receive any funds for the construction. The Harlan Municipal Water Works contracted for construction of the mains and subsequently transferred them to Black Mountain. By letter of November 29, 1989, the Commission advised Black Mountain that no additional information regarding the transfer was necessary, and to include the transfer in Black Mountain's annual report.

No doubt acquisition of the water line extension was beneficial to Black Mountain in that it acquired new customers without having to incur debt to construct the line. However, it also benefitted the Complainants by providing them with a safe supply of water without requiring them to advance the funds to build the extension. Customers of a utility who are fortunate enough not to have to pay for an extension of service to them due to other sources of funding, e.g. federal grant money, are certainly not offered a lower rate than other customers of the utility. It is recognized in rate-making that new customers benefit from plant previously in service which is fully paid for and to which they made no contribution.

The Complainants are seeking a lower rate due to circumstances which constitute a collateral matter not related to

the service they are receiving. That collateral matter is one for the Complainants to pursue against those they allege harmed them, and, indeed, most of the Complainants herein are parties to an action for damages in the civil court system. The other customers of Black Mountain should not be penalized by being subjected to discriminatory rates when the Complainants' problem is with the companies allegedly involved, not with Black Mountain.

The Complainants also allege that their water bills are unfairly high due to continual breaks in the service lines in the Holiday Mobile Home Park. The Complainants allege that the service lines in the park are 12 years old and cannot handle the pressure from the new water mains.

In response to the Commission's Order of January 30, 1991, Black Mountain provided a pressure reading at the mobile home park's master meter. This pressure-recording chart showed the pressure measured at the meter for a continuous 24-hour period. According to the chart, pressure within the 24-hour period ranged from 110 psig to 115 psig. While this pressure may be somewhat high, Commission regulations establish a ceiling of 150 psig at the customer's service line (807 KAR 5:066, Section 6(1)). From the pressure recording chart provided by Black Mountain, it does not appear that Black Mountain is in violation of Commission regulations with respect to the level of pressure. The Commission's jurisdiction extends only to Black Mountain, not to Black Mountain's customers. Thus, the Commission cannot compel the owner of the Holiday Mobile Home Park to build new lines able to handle the pressure from the newly constructed main. The

Commission notes, however, that Black Mountain, in its tariff on file with the Commission, reserves the option to discontinue service to a customer upon "waste or misuse of water due to improper or imperfect service pipes and/or failure to keep such pipes in a suitable state of repair." If Black Mountain determines that the service pipes in question do not meet the standards of this tariffed rule, it has the option to discontinue water service to the owner of the mobile home park.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. The Complainants' allegation that they are being unfairly treated by paying the same rate for service as all other residential customers of Black Mountain is without merit.

2. The Complainants' request that, as an adversely affected class, rates be established for them at 50 percent of the rate applicable to other residential customers and that the rate remain at the 50 percent level for the next 30 years is in conflict with KRS 278.170 and should be denied.

3. The rates prescribed for residential customers in Black Mountain's filed tariff are the fair, just, and reasonable rates for the Complainants herein.

4. The Complainants have submitted no evidence that Black Mountain has violated any Commission statutes or regulations, including 807 KAR 5:066, Section 6(1), which prescribes limits for water pressure.

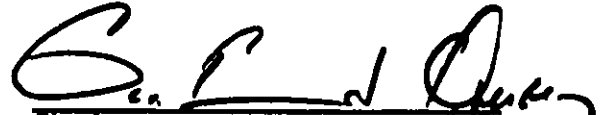
5. The Complainants have failed to state a claim upon which the Commission may grant relief.

6. No hearing was requested. A hearing is not necessary in the public interest or for the protection of substantial rights.

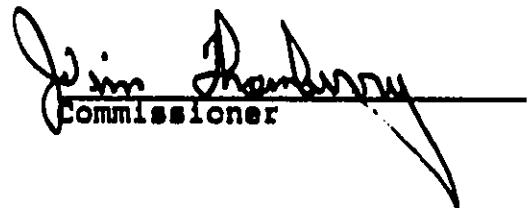
IT IS THEREFORE ORDERED that the complaint herein be and it hereby is dismissed.

Done at Frankfort, Kentucky, this 28th day of March, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director